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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,816	07/03/2003	Bryan Stephenson	200209591-1	6863

22879 7590 11/28/2006

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EXAMINER

LY, CHEYNE D

ART UNIT PAPER NUMBER

2168

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/613,816

Applicant(s)

STEPHENSON, BRYAN

Examiner

Cheyne D. Ly

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-11, and 13-28 is/are rejected.
- 7) ☒ Claim(s) 2 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 07, 2006 has been entered.
2. Applicants' arguments have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.
3. Claims 1-28 are examined on the merits.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1, 3-11, and 13-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golson et al. (US 5761505 A) (Golson hereafter) in view of Thompson et al. (US 5247664 A) (Thompson hereafter).

## **MOTIVATION TO COMBINE**

6. Thompson describes a described fault-tolerant method overcomes the deficiencies of prior art systems as directed “equipment...unavailability” (column 1, lines 9-65). While, Golson describes an unaddressed need to automatically and reliably manage global resources such as printers (equipment) etc. (column 2, lines 10-36). Therefore, one of skill in the art at the time of the invention would have been motivated by Golson to improve the method of Thompson to automatically and reliably manage global resources with the fault-tolerant method of Thompson.

## **BASIS FOR PRIOR ART**

7. In regard to claim 1, Golson describes a method of managing modification of configuration states (column 1, lines 61-65, and column 2, lines 40-50) of a plurality of resources of multiple types (column 2, lines 25-29) in a dynamic data center (column 5, lines 57-67, and Figure 1) comprising:
  - a. Creating a modification policy for said resources (column 6, lines 8-9). It is noted that the instant specification does not specifically define the limitation of “modification policy.” The exemplary disclosure (page 7, lines 5-14) discloses “modification policy is created to specify various parameters for controlling operation of the configuration state manager” wherein the disclosure of Golson cited above has been interpreted to anticipate the limitation as described by the instant specification.

- b. Obtaining a new modification for a configuration state of resources of a particular type (column 1, lines 61-65, column 2, lines 40-50, and column 5, lines 24-27);  
and
  - c. Automatically performing (column 2, line 45) said new modification to said configuration state of said resources of said particular type (column 7, lines 56-60, and column 8, lines 29-45) based on said modification policy (column 6, lines 8-9) by utilizing a resource pool (column 2, lines 55-63) without degrading a level of service provided by said resources of said particular type (column 3, lines 19-31), by performing said new modification to a configuration state of an available resource wherein said resource pool includes a plurality of available resources of multiple types (column 2, lines 25-28).
8. However, Golson does not describe the limitation of “by re-directing new requests for a service provided by a first resource to said available resource.”
9. Thompson describes re-directing new requests for a service provided by a first resource to said available resource (column 5, lines 34-55, especially, “If the data is unavailable at one site...the local transaction manager Q1 can redirect...”). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.
10. In regard to claim 3, Golson describes said dynamic data center is a utility data center (column 5, lines 57-67). Therefore, it would have been obvious to one of ordinary skill in the

art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

11. In regard to claim 4, Golson describes said configuration state includes a firmware configuration state (column 5, line 34-35). It is noted that the limitation of firmware has been attributed with a customary and ordinary meaning of computer programming instructions that are stored in a read-only memory unit rather than being implemented through software. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

12. In regard to claim 5, Golson describes said configuration state includes an operating system configuration state (column 5, line 31). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

13. In regard to claim 6, Golson describes said configuration state includes an application configuration state (column 5, lines 44-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

14. In regard to claim 7, Golson describes said new modification is an update (column 3, lines 19-23). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

15. In regard to claim 8, Golson describes said plurality of resources includes a resource that is one of a server (column 4, lines 23-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

16. In regard to claim 9, Golson describes said obtaining said new modification includes testing said new modification (column 7, line 60, to column 8, line 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

17. In regard to claim 10, Golson describes said obtaining said new modification includes determining whether said new modification is certified for use in said dynamic data center (column 5, lines 24-27). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

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18. In regard to claims 11, 13-21, 23-28, Thompson and Golson (column 4, lines 9-22) describes a computer-readable medium and system for implementing the method cite above. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

19. In regard to claim 22, Golson describes a graphical user interface to enable creation of said modification policy (column 5, lines 42-56, Figure 2, and column 6, line 56, to 25). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method described by Golson with the re-directing described by Thompson to automatically and reliably manage global resources with the fault-tolerant features.

## **RESPONSE TO ARGUMENTS**

20. On pages 7-9, Applicant argues that Golson does not teach the limitation of “automatically performing said new modification to said configuration states of said resources of said particular type based on said modification policy.” Applicant argument is not persuasive as discussed below.

21. Specific to the limitation of “based on said modification policy”, the instant specification does not specifically define the said limitation. Therefore, said limitation has been attributed with the customary and ordinary meaning a plan or course action for modification as understood by one of skill in the art. As previously cited, Golson describes a plan for a



configuration tasks with instructions to **add, delete, or modify** a resource object (column 6, lines 1-31). Therefore, the cited disclosure reasonably anticipates the argued limitation.

22. Specific to the limitation of “by re-directing new requests...”, Applicant’s argument is not persuasive because the new limitation is described by Thompson as cited above.

23. Further, Applicant asserts the new limitations are from claims 2 and 12 which have been indicated to comprise allowable subject matter. It is noted that the dependent claims 2 and 12 as a whole comprises allowable subject matter. However, the amendment of incorporating the limitation of “by re-directing new requests for a service provided by a first resource to said available resource” into the independent claims does not make said claims allowable.

### CONCLUSION

24. Claims 2 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

25. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to

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confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

26. For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199. The USPTO's official fax number is 571-272-8300.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Dune Ly, whose telephone number is (571) 272-0716. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Vo, can be reached on (571) 272-3642.

C. Dune Ly  
Patent Examiner  
11/26/06

